commission of the crime." (Reporter's Transcript of Record, Pages 4095 and 4096).

(k) "In cases of circumstantial evidence, facts should be proven which are not only consistent with the guilt of the defendant, but inconsistent with any other reasonable hypothesis of innocence." (Reporter's Transcript of Record, Page 4097).

(l) "If the evidence relating to any circumstances in this case is, in view of all the evidence, reasonably susceptible of two interpretations, one of which would point to the defendant's guilt, and the other of which would admit of his innocence, then it is your duty in considering such evidence to adopt that interpretation which will admit of the defendant's innocence, if the same may be done reasonably." (Reporter's Transcript of Record, Page 4098).

(m) "Testimony has been introduced by the prosecution which it is claimed tends to show the commission of other acts or offenses by the defendant similar to that charged in the indictment. I charge you that this evidence was admitted for the sole purpose of proving guilty intent, motive, or guilty knowledge of the defendant, and that it can be considered by you for no other purpose." (Reporter's Transcript of Record, Page 4099).

(n) "If you should find that there are discrepancies or inconsistencies existing in the testimony of any witness, or between the testimony of any witnesses, or if you should find yourselves disagreeing over various issues, real or apparent, you should

then ascertain whether or not such discrepancies or inconsistencies, or such points of difference, affect the true issues in this case. Examine such discrepancies or inconsistencies and such disputed points, look at the same squarely, and ask yourselves these questions: How does the decision of this, or that, or the other discrepancy or matter in dispute affect the guilt or innocence of the defendant? Regardless of what may be the truth concerning such discrepancies or inconsistencies ask yourselves the main question, did or did not the defendant commit the acts as alleged in the indictment? Is such discrepancy or such disputed point material to establish the main and material issue of fact as to the guilt or innocence of the defendant. If they are not material, if the decision of the same is not necessary to enable you to arrive at the truth of the guilt or innocence of the defendant, then such discrepancies or disputed points are immaterial and minor matters, and do not waste further time in discussing or considering them. Spend no time in the discusion of minor matters which, whether true or false, do not affect and are not necessary to enable you to answer the important question: Did the defendant do these things set forth in the allegations of the indictment?" (Reporter's Transcript of Record, Pages 4100 to 4101).

8. The Instructions Requested by Appellants and Refused.

The Court erred to the substantial prejudice of the Appellants in refusing to give the following in-

structions requested by Appellants: Instructions Numbered 49, 55, 58, 63, 71, 76, 78, 84, 85, 92, 99, 102, 103, 105, 107, 108, 109, 111, 112, 115, 116, 117, 118, 119, 120 and 121.

9. Motion for a New Trial.

The Court erred in denying Appellants' motion for a new trial on all the grounds stated therein. (Page 68 of the Clerk's Transcript of Record).

10. Motion in Arrest of Judgment.

The Court erred in denying Appellants' motion in arrest of judgment on all grounds stated therein. (Page 67 of the Clerk's Transcript of Record).

DESIGNATION OF PORTIONS OF RECORD DEEMED NECESSARY FOR CONSIDERATION OF APPEAL

1. The entire Clerk's Transcript of Record.

2. The 41 volumes of Reporter's Transcript of entire proceedings.

3. All exhibits (original exhibits to be used in consideration of this appeal without reproduction in the record).

The foregoing statement of points on appeal and designation of portion of the record which Appellants deem necessary for the consideration of said appeal is respectfully presented and filed in compliance with Rule 19, Subdivision 6, of the Rules

of Practice of the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ HAROLD C. FAULKNER,
/s/ A. J. ZIRPOLI,
/s/ WILLIAM M. MALONE,
/s/ RAYMOND L. SULLIVAN,
Attorneys for Appellants.

[Endorsed]: Filed June 17, 1946. Paul P. O'Brien, Clerk.